THE Case and Argument against SIR IGNORAMVS OF CAMBRIDG

BY

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THE CASE

MOnſieur *Avidus* in le droit de Madame Parcella ſa feme fuit ſeſie del Mannor in Wrangle & Jars in Countee de *Cumberland*, a que l' advowſon d' Egliſe in L. fuit appt. il grant ſon mannor in Wrangle & Jars *cum pert.* al Sir *Symon Magus*; le egliſe devient voide Monſieur Avidus preſent. B tunc devient recuſant convict & mort. ſa feme preſent *D*, Sir *Symon* preſent E, le Vniverſity de *Cambridge* preſents Sir *Ignor.* le agard. Jure patronat, Leviſq; eſlie le Jury trove tout le matter avandit & q; B. ad primer benefice, feme fuit ſchiſmatique, E, ad contract ove Sir *Symon* de further-ſon inſtitution, Sir *Ignorannus* fuit egregie illiteratus, 6 mois paſs, Roy preſent Do Apollos le Leviſq; eſlie collate M. *Grace* ſon Chaplein demeſne a que le avoydance pertain. hac vice. *Quere*

IN THE CASE

Intentio Nominum, & Interpretatio eorum.

1. MOnsieur Avidus *is the greedy gripeing patron who will not part with the Benefice, but with a* Si quis plus dare voluerit.

2. *Sir* Symon Magus *is the Simoniacall patron:* Nota, *He is descended of no great Gentry, but ascended from a Kna. to a Kni. He lately made two purchases, the one of his Knighthood, the other of his advowson.*

3. *B. the Cleark of* Monsieur Avidus *is noted for an ingrossing Benificer, who though he had not passed one degree in the* Vniversity, *yet boldly enterprized to set upon two Benifices in the Country,* Audaces fortuna juvat.

4. *The* Vniversity *of* Cambridg *are patrons by the law of* 3. Jacobi, *but bestowed the Benefice on a sot without reason,* Sapiunt generaliter, insipiunt particulariter.

5. *Sir* Ignoramus *intended for the* Vniversities Catacoustichon *a generall noted Coxcomb, a resemblance*

ſemblance of the Actor which they beſtowed on the Innes of Court, Ignoramus.

5. *The* Eveſq; Eſlie, *in* Engliſh, *ſignifieth a Biſhop Elect, but not ſacred; I will ſay no more to but* Nolo ſe vlterius tangere.

7. *The Four preſentations comming ſo neere together, ſhew to us that many Clarkes at ſome times ride poaſt for one Benefice,* Poaſt for a Benefice.

8. *The awarding of the* Jure patronatus, *preſents unto us pretty device to ſet many Clarks together by the eares whileſt a third perſon get it from them all.*

9. Doctor Apollos *is a grave and learned Divine, the Kings Chaplaine, to demonſtrate, that though there be many Knaves and fooles, yet there be ſome wiſe learned men alſo.*

10. *Maſter* Grace *is intended the flouriſhing ignorant favourite, who by his friend or his purſe (and not for his deſerts in Learning) attaineth a Benefice: he is a reſemblance of the Law-favourite, who for his Learning deſerves rather to be an Auditor, then an ignorant Orator;* Sed fortuna favet fatuis, *Inſomuch that he is a Preacher or Practiſer of Fortune; the truth whereof is, that the deceaſe of his friend is the end of his practiſe,* Amicus Uſque ad mortem: *And of this* Ignoramus, *and Sir* Ignoramus *I motto thus:* Pari jugo ſociantur aſini.

11. *I Called the Woman* Parcella, *and ſet her out for a Schiſmatique, to this end, becauſe a certaine woman (I will not name) but one profeſſing to be a Browniſt, took a Journey to* Amſterdam; *& after 2 yeares ſtay ſhe returned againe with Child to her husband,*

which

which sheweth though she be a weak vessell to graft Religion on, yet she is a strong stock to get a Religious child on, vera filia Matris.

In all these, I only aimed at the iniquity of the time, and by their Names to demonstrate their qualities; I suppose that no Man or Woman can religiously find themselves grieved at me, If they doe, I say no more to them, but *Adsum qui dixi, In me convertite tela.*

THE

THE CASE

Monſieur Avidus in the right of *Parcella* his wife was ſeiſed of a Mannor in wrangle and jars in the County of Cumberl: To the which the advowſon of the Church of L. was appendant. He granteth his Mannor in wrangle and jars *Cum Pert.* to Sir *Symon Magus*; the Church became void, and *Monſieur Avidus* preſented thereto B. and then became a Recuſant convict, and died. His Wife preſented D. Sir *Symon Magus* preſented E. The *Vniverſity* of *Cambridg* preſents Sir *Ignoramus*: The Biſhop elect awards a *Jury Patronatus*. The Jury findeth all the former matter, and that B. had a former benifice; the Wife was a *Schiſmatique*, and had contracted with Sir *Symon* to further his inſtitution. Sir *Ignoramus* was *Egregie Illiteratus*. The elect refuſeth them all. The Six moneths paſſe, the King preſents Doctor *Apollos*, The Biſhop elect collates Mr. *Grace* his owne Chaplin.

To which of theſe the avoydance of this Church appertaines for this turne, *Quere*

There

There be in this case six Patrons.

1. Monsieur *Avidus*, *In iure uxoris*, the greedy patron.
2. *Parcella* his Wife, *In Jure suo proprio*, the Schismatique.
3. Sir *Symon Magus* the Grauntee, a Simoniacall patron.
4. The Vniversity of C. by the Statute of 3*tio Iacobi Regis*, of Recusants.
5. The King by the Statute of 23. *Eliz.* of Symonie.
6. The Bishop elect by lapse.

There be 6 Clarks which stand for this Church.

1. B. The Clark of Monsieur *Avidus*, double-beneficed.
2. D. The Clark of *Parcella*, blotted with Schisme.
3. E. The Clark of Sir *Symon Magus*, guilty of Symony.
4. Sir *Ignoramus* the illiterate Clark of the Vnivetsity.
5. Doctor *Apollos*, the great and learned Divine.
6. The Chaplaine of the Bishop, Fortunes favourite.

So that there be twelve persons in the case, which strive for this Church, and every one of their parts hath been taken, ether by one Gentleman, or by another, which have argued the same before me. So that now (I am sure) there is some expectation of the Gentlemen Auditors, (which be many) which part I shall take in this case

caſe: but before I ſhall tell you, with whom I meane to take part, I ſhall expound unto you, the pretty tale of a merry hoſt. For when once I travelled over the *River* of *Trent*, and *Owſe* from *Lincolne* towards *York*, I lodg'd at the houſe of a merry hoſt, and being many of us gueſts at ſupper, our hoſt told us of divers men of their Town had been fiſhing in the *River* of *Trent*, where were good ſtore of *Salmons*, and he asked his gueſts how many *Salmons* we thought they had got that day, where-upon ſome of us ſaid twenty, others fifteen, others ten, & ſome more, ſome leſs, every one according to his own conceit and humour; and when every gueſt, had ſaid by gueſſe how many *Salmons* were caught, we were all of us deſirous to know of him, how many they had got, who very wittily, and unexpectedly told us, that they had got, never a one. So I may apply this jeaſt to our caſe. Here be twelve perſons in the caſe pretend right to the avoydance of this Church, and every one of the Gentlemen by great and ſtrang chance, have taken ſeverall courſes, and alſo have held with a ſeverall party; ſo that now (I am aſſured) it is much expected, which of the parties I ſhall hold to have right to the ſaid avodyance, whereupon (with the merry hoſt) I do hold, that never a one of the parties in the caſe; hath right to the Church for this time, but that there is a perſon not named in the cauſe, hath right to the preſentment, whoſe name I mean to conceale till I grow towards the end of my argument; and therefore now I meane to diſtinguiſh and divide my caſe into theſe ſeverall points, which be as followeth.

The points intended in my case be,

1. *What a Mannor is, and whether a Mannor may be devided, and that two Mannors may be made of one.*

2. *Whether the advowson doth passe with the Mannor granted, or doth remaine with the thing ungranted.*

3. *Because the Advowson lieth in another Town, then where the Mannor lay, whether it did pass or not, by words Cum Pertin.*

4. *When* Monsieur Avidus *did present & dye, whether the wife should not have her Clark advanced to the benefice, & the rather because the Clark presented was after refused by the Bishops elect.*

5. *If after that Sir* Monsieur Avidus *became a recusant convict, whether the presentment be transferred over to the* Vniversity *of* Cambridg *by the statute of* 3 Jacobi *& so ought to be conferred upon their Clark Sir* Ignoramus, *or that he must be put to seek out a benefice in some other place.*

6. *Whether the* Jure Patronatus *be well awarded by the Bishop elect or not, and whether the verdict of the Jury was according to Law or no.*

7. *If the refusall of the Clarkes was done upon a iust ground or no, and whether notice was necessary or not.*

8. *If it be such a Simony committed by and between Sir* Simon *and his Clark, as that thereby the Clark lost his benefice and Sir* Simon *his presentment* hac vice, *and whether the King may present by the statute* XXXI Eliz, *or not.*

9. *Whether the leveſque elie might present by laps.*

10. *What is the preſon to whom the presentment doth*

doth belong if none of the parties aforesaid have right according as I hold

And for the Argument of the first point, what a *Mannor* is. Mr. *Bracton* saith, *quod est Capitale mesuagium ad quod possint diversa pertinere*, Master *Plowden* in *Hill* and *Graunges* case defineth a Mannor to be *quoddam Compositum* of demesnes and services: and I doe hold that a Mannor iss a little Common-Wealth, and is compounded of necessity, as things and causes without the which it cannot be nor have perfect essence. 1 Poins Bracton Plow. Com. 170.

which three things be,
1. *Scitum pro habitatione Domini pourson delite & demesnes* for his profit.
2. Services to be done by the Tennants testifying obedience.
3. And a Court Baron for the execution of justice amongst the Tennants.

And these be all the things which be of necessity required in the essence of a perfect Mannor. For if any of these be wanting, there is but an Nuncupative Mannor as it is tearmed in Sir *Moyle Finches* case in the Lord *Cooks* rep: or rather (as I may more fitly terme it) And imaginary Mannor *Nomini & vulgari appellatione & non in re & in opinione Jurisperitorum.* Cook. rep. 6.

There be divers things which be not required, *ex rei necessitate* to the makingof a Mannor, & yet for divers respects and considerations they be necessary to appertaine thereunto, as warrens of *Counyes*, Chases and *Parkes* for the Lord to use for his delectation, villenes regardants to doe the Lords

works, piſcaries for proviſion in his Houſe, and advowſons for the advancement of men skilfull in Religion and many other things of the like nature, but all theſe be but inſtrumentall adjuvants and ſupplements, and are nothing to the eſſence of a Mannor, and yet they be neceſſary to be had therewithall, either for the profit or pleaſure they do bring in their ſeverall kinds: So that it is holden in our books that by the grant of a Mannor the Scite, demeſnes, ſervices, and Court Baron do paſſe, but the Warrens, Parkes, Chaſes, Piſcaries, and things appendant do not paſſe to the Grauntee by the grant of the Mannor, without the words
8. H. 7. *cum pertin.* as appeareth in 8. *Hen.* 7. fol. 4. *b.* But whether or no an advowſon appendant will paſſe without the words *cum pertin.* by the graunt of the Mannor; hath been queſtioned in our bookes, and Mr. *Perkins* title grants fol. and in 44.
Pa k. *Edw.* 3. fol. 40. and many other books be, that will
44. E. 3. paſſe without the words *cum pertin*: But 8. *Hen.*
8. H. 7. 7. aforeſaid is to the contrary, and ſurely I can ſee no perfect reaſon wherefore it ſhould paſſe *per Nomen Manerii* without the words *cum pertin.* more then other appendants and appurtenants will do, conſidering it hath alwayes the word appendant with it, ſuppoſing it to depend and belong to a Mannor and not to be parcell, and it is alſo in pleading ſaid *Pertinere*, unleſſe the old conceit hath wrought the opinion of men to be, that it is parcell of the Mannor, becauſe Livery and ſeiſin might have bene made of it, but the Law in that caſe being altered, I ſee no reaſon but that may ſtand in equipage and equall termes with a villeine

villeine regardant, which will not paſſe without the words *cum pertin.* But generall opinion doth ſway the other way; and therefore I leave it where I found it, and yet I intend to prove hereafter, that (as this caſe is) theſe words *cum pertin.* muſt be materiall to paſſe the advowſon or elſe the word Mannor will faile. Sir *Symon* the wicked grauntee when he ſhould ſtand moſt need of it.

It is fit in the handling of this point, to diſpute whether a Mannor may be made at this day or not, & *I* hold it cannot, the reaſons whereof are fit to be ſet forth and declared. I confeſſe that the Law is taken in 33. H. 8. in *Brookes* Caſes, pl. 210. & in 35. H. 8. plac. 274. in the ſame Book and in Sir *Moyle Finches* Caſe. That a Mannor cannot be made at this day, Although a man gives divers parcells of Land, *Seperaliter in taile Tenandum* of his chiefe Manſion-houſe, and ſome men have been of opinion that Mannors might have been made untill the Statute of *Weſtm.* the third of *Quia Emplores terrarum* did take place, becauſe that Statute took away the Feſans of tenures, *ſator veray ſeigniour, & veray tenants,* which muſt be, and concurre where there ſhall be a Mannor; but I do hold [for mine owne part] that there be two materiall cauſes, wherefore a Mannor cannot be made *De novo* at this day; The firſt, becauſe all this Realme ſoon after the conqueſt theroof by *William* the Conqueror, was devided into Mannors: So that al lands, & every Land was put within one Mannor or other, & therefore the Law was ſo ſatisfied in that, as there

33. H. 8.
35. H. 8.
Sir Moyle Finches C. ſe.

was an end of making of Mannors when the cauſe ceaſed. 2ly. This word Mannor implieth in it ſelfe, A being time out of memory, which we call preſcription, and this appeareth to be ſo by the ſaid books of 33. H. & 35. H. 8. which are, That a Mannor muſt be *De tempore cuius memoria hominum non exiſtit in contrarium*: So that for theſe two reaſons, I am of opinion, That neither a Subject nor the King can make a new Mannor at this day, Alſo, for the abſurdity, It were unfitting that every petty Free-holder by giving ſeverall parcells of his Grounds to diverſe ſeverall perſons, ſhould make himſelfe Lord of a Mannor at this day.

33. and 35 H. 8.

But the queſtion and point in my caſe is not whether one might make a Mannor *de novo* at this day, But whether, of one old and perfect Mannor two Mannors may be made, and whether one Mannor may be devided into two or not?

It is true that our Law loves entierties, and rejects fraction, *Quar union fait unity & fraction fiſt diviſion, Come garranty per le Ley eſt enter & pur ceo le party, que ad ceo ne puit, ceo pur ſon act demeſne devider*, as appeareth by *Morices* caſe in the 6. Rep. of the Lord *Cooke*, and by Mr. *Littleton*; If one have a Rent charge, and purchaſe parcell of the tennancy or graunt part of the Rent to another: All the Rent is extinct in the one caſe, and the diſtreſſe is loſt in the other; For as the Rent was an entire thing, ſo was the diſtreſſe, and *Lex non patitur fractiones*, So in E. 4. The Office of the Chiefe Prothonotary could not be granted to two, to make two ſeverall Officers of them

Morices Caſe.

them: *Quia ſic centum*, but as Auditor *Curles* Curles Caſe. Caſe in the 11. Rep. Two Perſons may be made one Officer, *Sed hoc per ſtatutum*: So by 3.E.4. 3. E. 4. and *Dyer* fol. Two Joyn-tennants cannot make Dyer Fol. partition without a Deed, becauſe it is contrary to the nature of Joyn-tennancy, to have a diviſion or partition, So that we may collect, that where the Law hath made an union, it diſlikes the contrary, and ſo it may be well held in argumentt that one Mannor cannot be divided into two: yet, in 9. E. 4. fol. 17. If the Mannor of Dale be 9. E. 4 held of the Mannor of Sale and Eſcheat, that is parcell of the Mannor of Sale; So here is two Mannors made into one, which proves the one derived out of the other *in principio, ſed non licet arguere principia*, But that is by act in Law. And ſo is 26.H. 8. fol. 4. that if a Mannor deſcend to 26. H. 8 4 two Coparceners, and they do make partition ſo that either hath demeſnes and ſervices, here either of them hath a Mannor, *Et cum hoc concordat* 12. 12. H. 4. H. 4 For Coperceners are by Law compellable to make partition, and then the Law which doth compell the doing of the act doth never work any injury to either party, For that were torcious which cannot be preſumed in the Law which in it ſelfe is right and juſtice; And although that 9. E. 9. E. 4. 4. aforeſaid ſeems to ſway that two Mannors may be made one by act in Law, yet by the act of the parties, I find the Law contrary. As in 2.E.2. 2. E. 2. and Mr. *Perkins*, where a man had two Mannors Perkins. and he for eaſe of his tennants cauſed all his tennants to come to one Mannor to do their ſuit and ſervice, and that for along time, yet that did not

make

make the tennants of the other Mannor, in right tennants to that Mannor, they did their ſuit unto, neither did it make both the ſaid mannor one entire Mannor: In 9. E. 4 fol. 17. It is ſaid by *Catesby* that if I have a Mannor which lyeth in *Dale*, and Sale, and I grant my Mannor in *Dale*, the Grauntee hath a Mannor, and yet it ſhall extend but only into *Dale*; And in Sir *Moyle Finches* caſe, it is ſaid for Law, That if I have a Mannor and grant part of the demeſnes and ſervices to *I. S.* yet by this grant the Grauntee ſhall not have a Mannor. Out of which two books I gather this conceit; That if I have a Mannor, which doth extend into *Dale*, and Sale, and there be demeſnes and ſervices in either Town, and I grant my Mannor in *Dale*, that the Grauntee hath a Mannor there, and that which remaineth in Sale, ſhall be but as things in groſſe and no Mannor; *Sic è converſo*, If I grant all my Lands, Tenements, and Hereditaments in Sale, the Grauntee ſhall not have a Mannor, but the demeſnes and ſervices as things in groſſe, and the Mannor ſhall remaine with me in *Dale*.

9 H 4.

Finches.

So I may conclude that Sir *Symon* the Grauntee, hath a Mannor in Wrangle, and Jars paſſed unto him.

a point.

But now whether the Advowſon doth paſſe to him in ſome queſtion, For things appendant or appurtenant are rather inclinable to remaine, then to paſſe by grant; Forin 33 .H. 8. in *Dyer* fol. 48. and 44. E. 3. *Fitzh: quare impr:* plac. 137. If one have an advowſon appendant

33. H. 8. Dyer Fol. 43.44.E.3 Fitz. H Impt.Q 137.

to

to a Mannour, he may by expreſſe words make that appendant to one acre parcell of the mannour, but not by theſe words *cum pertinentiis*; but if theſe caſes hereafter enſuingbe wel noted & weighed, they wil make he Law to appeare, where theſe words, *Cum pertin.*, be requiſite to be uſed to make the advowſon paſſe, and where not. The firſt caſe is in *6. E.* 3.44. *Fitz.h.* title *quare imp.pla.* 40. which is, that if the third part of a Mannour with th'appurtinances, be aſſigned in dower to a Feme, the third part of the Advowſon will paſſe to her without naming of it in *expreſſis verbis* &c. So is *9. E.2. Fitzh.* Title *Breife pla.* 844. That if one bring a formedon of the moety of a mannour, *Cum pertin.* he by that ſhal recover the moety of the Advowſon; and the reaſon thereof (as *I* conceive) is, becauſe the *Feme* in the firſt caſe, comes in upon the beſt poſſeſſion of her Husband, and in het caſe, and in the caſe of the Recoveror they both come in upon an ancient right, which is as well to the advowſon as to the Land. And theſe be the reaſons (as *I* conceive) wherefore the part of the Advowſon was to come to them by vertue of the ſaid words, *Cum pertinen-iiis*, but without the ſaid words, (as *I* conceive by the ſaid caſes) no part of the advowſon had come to them. There is one other pretty caſe in *17. E* 3.Fol.38. and in *2. H.* 7. Fol. 4. and 5. *I*f there be three Coparceners of a Mannour, and of an Advowſon appendant, and they make partition of the Mannour and ſay nothing of the Advowſon, the Advowſon remaineth in common undivided as it did before; and the reaſon (as *I* conceive) is this, becauſe it ſtands as a thing indifferent, whether partition be made of it or not, and there is neither profit nor prejudice comes by the not dividing of it, more then if it had been divided in the intendment of the Law: But Maſter *Stamford* in his prerogative Fol. 43. 8 hath the caſe thus, That if *I. S.* be ſeiſed of a Mannour to the

1 *6.E.3.* Fitz. Q. Impr. 44.

9: E 2, Fitz Bre. 844

17 E 3. 2.H. 7.

4. Stamfords preteg. 43

which there is an Advowſon appendent, and *I. S.* graunteth the moity of the ſaid Mannour *Cum pertinentijs*, that doth not paſſe the moity of the Advowſon without expreſſe mentioning of it; and the reaſon (as *I* conceive the caſe) is, becauſe by way of graunt, the part of the Advowſon will not paſſe being the only act of the party, and it will rather remaine then paſſe in a caſe indifferent, *quia poteſt facilius remanere quam removeri*. Yet all theſe caſes differ from my caſe in words, for that the Mannour in Law is transferred to Sir *Symon* the grauntee, and that which remained in *Monſieur Avidus* was but demeſnes and ſervices in groſſe, (if the Law be as *I* have taken it to be) and then *I* take the Law to be, that the Advowſon will rather paſſe with the Mannour, as *cum re digniori*, then ſtay with the reſt of the Demeſnes and Services in groſſe, being in *gradu inferiori*. So that, if the reſt of the matter of the caſe enſuing doe not hinder it, then (in my opinion) the ſaid Advowſon were wel transfered to the Grauntee.

3 Point

But now the point will be, whither the ſaid Advowſon wil paſs to the Grauntee, becauſe it lyeth not in *wrangle* and *Jars*, to the which the Graunt is ſtinted, but in *L.* being another diſtinct Town *per ſe*. And *I* doe think that notwithſtanding, the Advowſon will paſſe to the Grauntee, for that it is an hereditament as well where the Mannour is wherto it is appendent, as alſo in the Town where

2 H. 7. the Church lyeth; like to the caſe of 21. *H.* 7 Fol. 6. land in *Suſſex* is held of a Mannour in *Eſſex*; it is an hereditament in either County, and the diſtreſſe taken where the land lyeth may be driven into the County where the Mannour is, as appeares by 1. *H.* 6. 3. and 1. *Eliz. Dyer* Fol. 168.

1. H. 6. 3. 1 Eliz. Dyer. 168. And the Advowſon is there more properly where the Mannour is, then where the Church is, becauſe the Advowſon is one thing, and the Church another, and it

Dyer. 323 is moved for a queſtion; in 15. *Eliz.* in *Dyer* Fol. 323.

That

That if a man graunt his hereditaments in D. where the vicaridg is which was appendent to the Colledg at *weſtminſter*, whither that paſſe the Advowſon; ſo that the doubt was rather held, whither the Advowſon was an hereditament where the Church lay, then where the Colledg was, to the which it was appendant; yet it was there reſolved that it did paſſe, becauſe the view in a writ of right of an Advowſon, was there to be had, where the Church was. And againe in *Dyer* 2. and 3. *Eliz*. fol. 194. The Biſhop of *Lincoln*, was patron of a prebend in the Cathedral Church of *Lincoln*, and the body of the prebend lay in the County of *Bedford*, and it was held that the *quare impedit* ſhould be brought in the County where the Cathedrall Church was, and not in the County of *Bedford* where the corps of the prebend lay, becauſe the Inſtallation, which is properly recovered in this action, muſt be in the cathedral Church, where the Clark is to have *Locum & Stallum in choro*. But in a graunt, which ſoundeth in point of profit, there it is properly an hereditament; alſo where the profit lieth, that is, where the parſonage is: So that *I* ſuppoſe the Advowſon did paſſe to Sir *Symon*. But (to make the caſe more perſpicuous) it appeares by my caſe, that although the graunt to Sr. *Symon* be ſtinted, and tyed only to *Wrangle* & *Jars* as to the Mannour, yet the Advowſon is at liberty, becauſe it is carried by the words *Cum pertinentijs*, which come after the Town in the caſe, and ſo is not ſtinted to the Town of *Wrangle* and *Jars*, but is left at larg. Dyer. 194.

And ſo my conceit in the caſe appeareth concerning the graunt of the Mannour, and the Advowſon, and therefore *I* will ſay no more thereof, but will proceed to the other points of the caſe.

And now the next point of the caſe is, when the 4 Point.

Church did become void, and the Husband preſented a Clark thereunto, and dyed before his Clark was received, whether now the Wife, whoſe inheritance it was and is, ſhall or may preſent her Clark, and have it from the Clark of her Husband, as alſo from the Grauntee, and the rather, becauſe that upon the refuſall of the Husbands Clerk, it ſtands in caſe now, as if no preſentment at all had been made thereto.

A *Feme* covert in four ſeverall caſes is in the life time of her husband reputed in the law as a *Feme ſole*.

1 2 H 7. As in 2. H. 7. *If* ſhe be an executrix, ſhe may pay debts and diſcharge Legacies.

2 10 H 7 And in 10. H. 7. 20 *a*. A man being *Ceſtuy que uſe* of Land, deviſed the ſame to be ſold by the Executrix, and made his Wife Executrix, and adjudged that ſhe might ſell the ſame to her other Husband after the death of her firſt Husband.

3. 3 E 1. And in 31. E 1 *Fitz. Cui in vita. Plac.* 31. The Wife of a man abjured might make alienation of her Lands, or bring her *cui in vita*.

4 London, Cuſtome. *Feme Covert*, Sole Merchant, by the Cuſtome of *London*.

But theſe caſes extend to prove what a *Feme covert* may have or do in the life-time of her Husband. But my my caſe tendeth to what a *Feme* ſhall have after the death of her Husband, which in his life-time he had power of, and is now the queſtion.

In the which *I* doe obſerve a *quadri partite*.

Diverſity.
1. That ſome things the Wife, after the death of her Husband, without doubt ſhall have.
2. Some things ſhe cannot have.
3. Other things ſhe ſhall have, *Sub modo*.
4. Other things ſhall go to her or to the Husbands Executors, which can firſt obtaine them.

1. And as to the firſt of theſe, a Woman after the death

death of her husband, ſhall have ſuch bonds and bills for debts as were made to her before coverture, and which be not recovered or received by the husband in his life time, and ſhe ſhall have ſuch debts and goods remaining unaltered as ſhe brought with her as Executrix to any perſon: And by 7. *H.* 6. 1. and 9. *H.* 6. 52. If ſhe brought a Leaſe for yeares with her, and the husband dyeth without altering the property of it; it ſhall remaine to the wife; yet in the life time of the Husband, he had *poteſtatem alienandi, relaxandi, vel aliter diſponendi*, of, and over all the ſaid matters. 7. H. 6. 9. H. 6.

2dly; *It* is clear that all Chattells perſonall, as ready Mony, Plate, Jewels, Apparell, Horſes, Kine and other goods of like nature, which a woman brings with her in marriage, or which ſhe hath given to her during coverture, the abſolute property therof is veſted in the Baron, & though he dye they ſhal go to his Executors and Adminiſtrators, as appeareth by *Fitzh. Nat.*br: fol. 69. and many other books.

3dly; *If* a treſpaſſe be made upon he Lands of the Wife, in the life of her Husband, as by breaking of his cloſe, deſtroying of the Graſs and Corne, the wife, after the death of her husband, ſhall have no action for the puniſhing of theſe torts, for theſe were treſpaſſes done to ſuch things as the Baron ſole ſhould or might take the profit of during coverture; but ſuch torts, treſpaſſes and injuries which extend to the hurt and dammage of the wives inheritance, as pulling down of her houſes, cutting up and deſtroying the Trees, of theſe, the wife ſhall joyne in the action with her husband in his life time, and ſhall and may maintaine an action therof, after the death of her husband. And this diverſity *I* collect out of the bookes of 50. *E.* 3. 13. 43. *E.* 3. 16. 21. *R.* 2. title briefe, 933. But in this part another matter ariſeth, which is, whether the wife ſhall have the avoydance, and 50. E. 3 43. E. 3. 21. R. 2.

the preſentment to a Church which voydeth in the life time of her husband, being her inheritance, and he dye before he have preſented: And *I* ſuppoſe ſhe ſhal; and ſo of a Ward which hapneth in the life time of the husband, by reaſon of the death of a free-tenant of the wife, for theſe be Chattells reall. And yet if the Ward be ſeized by the husband in his life time, or if he hath preſented to the *Church* before his death, theſe acts do ſo veſt the ſame in the husband, as that they do wholly deprive the wife therof. I grant that the husband & wife may joyn in the preſentment, or joyn in the *quare impedit*, wch if they do ſo, then that will reſerve the ſame unto the wife after the death of the husband. And *I* find by 15.*E*.4.9. that they may joyn in the *quare impedit*, or the Baron may, if he will, bring it alone; but in our caſe, becauſe the Baron hath preſented to the Church, ſole without his wife, that thereby ſuch an intereſt of the preſent avoydance is veſted in the Baron; as, though the Biſhop after refuſe his Clark, yet the preſentment ſhall goe to his Executors, and not to the wife; And herewithall *I* intend to diſmiſs Miſtris *Parcella*, and her Clarke, from the preferment of this Church, at this time.

4thly But to make good the fourth part of my diverſitie, which between the Executors of the Husband and the wife, is a plaine *Capiat qui capere poſſit*, I find by 3. *H*. 6. 37. and 43. *E*. 3. 10. That if an Obligation be made to the Baron and feme, and the Baron dyeth, that the Executors or the wife, which may get the Obligation, may ſue it, and recover the mony.

3. H. 6.
43. E. 3.

And herewithall I end theſe diſtinctions.

5. Point. And will now proceed to the title of the Univerſity of *Cambridge*, and of their inglorious Clark Sir *Ignoramus*, which is the fifth point of my caſe.

No Inne of Court or Chancery-man need wonder, wherefore I ſtiled the Univerſities Clark, by the name of

of Sir *Ignoramus*; For it is to be conceived that he had commenced Batchelour of Art in ignorance; and the late skirmiſh he made with *Ignoramus* of the Innes of Court (being both of one bloud and kindred) may put us all in perfect remembrance of him; yet both theſe kinſmen in ignorance wanted not their favouring friends to help the one of them into practiſe, and the other of them to a Benefice, when many a Learned and a ſtudious Gentleman (wanting help of friends) might ſit without both: So much is this froward age, we live in, to be condemned, the more we ſee ignorance preferred before learning and vertuous qualities; and dull-pated Jobber-noles unworthily advanced to places of profit and dignity, when many a learned Muſe ſits in his Study, deſtitute of either; Herein *I* taxed only the Time of partiality, that preferr'd an ignorant Aſſe, before a Learned Schoolman, a fault too common in the Univerſity, and not without blame in the Inns of Court and Chancery.

But ſeeing we have Sir *Ignoramus* amongſt us in the Schools of Law, let us now ſee if we can toſſe him like a dogge in a blanket, and make him vomit out his Nonſence, and rid him of his ignorance; But ſhall we ſtrive with an impoſſibility? *Quia ignorantia ſua hæret in nomine, in capite, & in cute?* Yes, and thruſt him into the ſaid Litigious Rectory; a fit Chapleine for ſuch a Church; Beſides, it may well be found out in the caſe, that I intended not to ſpend much labour to reform Sir *Ignoramus*, (counting the labour as endleſs as the Maides in the Strand, which endeavoured by waſhing the Black-a-More, to make him white:) But to vent out ſome paſſion againſt Sir *Symon Magus* for his Simony, and one that was a Magitian from his infancy; I meane not that perſon named in the 8th of the *Acts* of the Apoſtles, for he offered to give mony to buy the beſtowing of the Holy Ghoſt; This refuſed not to take mony to beſtow a

Benefice

Benefice, ſo they were of kinne, this was a Knight without living he was a Knave without grace.

For *Monſieur Avidus*, *I* ſet down his name ſo, becauſe it beſt ſuited to his condition; for he was ſo far from covetouſneſs, as that he ſold the Advowſon to Sir *Symon* whom he knew was a perſon likely to give moſt mony for it, and yet according to the text of *Fallere fallentem non eſt fraus*, h cold have found in his heart to have cunningly defeated him of it, forgetting the old *reperte*, *quod fallere quenquam non eſt lawe.*

The *Seditious Schiſmatique* woman, though her effeminacy ſhould have innated in her mildneſs, peace and concord, yet having layen with her old cankered husband, he ingrafted in her ſeditious frowardneſs, ſeeming religious forwards, being irreligious backwards in all her actions; for now adayes women grow ſo ſeeming religious as that they have found a back way to Heaven, which men never knew of; well, let her trot thither as faſt as ſhe can, *I* meane to ſet both her and her Clark beſides the Cuſhion, leaſt ſhe ſhould bring as troubleſome a Clark to the Church, as ſhe her ſelfe is a cumberſome huſwife in her Houſe.

And ſeeing I had framed my caſe upon ſuch a confuſed *Chaos* of non-conformities, I thought Maſter *Plurality*, the ingroſſing Beneficer, ſhould be one of the actors in this comudy; he is a perſon compounded out of many particularities ino a qualificationdiſpenſation, and non-reſidence be the only liberall ſciences in his ſtudy. Ever when he talkes of the Law he exagainſt clames againſt the ſtatute of 21 H 8. which oppoſeth pluralities unleſs ſometims he caſts outſome ſo his ſome prohibitions, which be *Fulmina Jovis* or rather *Fulmina Regis* to repreſs the greedy appetites of ſuch of the coveting prelacy as cannot content themſelves with their old duties and cuſtomes.

21 H 8.

But

But let all this confuſed *Chaos* of non ordered perſons ſleep a while and dream of ſome metamorphoſis, to change them from their ſeverall Leproſies, while I paſſe into the argument of the fifth point of my caſe, and that is, whether the Univerſity of *Cambridge* have title to the Church, to preſent *hac vice*, by the Statute of 3. *Ia. R.* For if the Law prove ſo, then it will make well for their Clark Sir *Ignoramus* (according to the old Proverb) *The more foole the better lucke.* But I am of opinion that the Univerſity hath no right by the ſaid Statute; for it doth differ much from the Univerſitie of *Oxford*, in my Lord *Cookes* xth *rep*: For there in that caſe although the grant of the next avoydance was made before the conviction of the Grauntor. Yet it was after ſuch time as he became a Recuſant, and alſo the church became voyd after the conviction. K. Jam. Co

But in my caſe the Church became voyd before the Grauntor became a Recuſant, when he ſtood *rectus in Eccleſia*, and he preſented his Clarke to the ſaid Church when he ſtood cleare, before he was ſpotted with any irreligious quality, and after preſentment; the Clarke had that intereſt in the Church againſt his Patron, that the Patron could not revoke or repeale his preſentation, as it appear the caſes of 12. *Elizabeth*, *Dyer*: fol. 292. and 18. *Eliz.* 348. and *Fitz. Nat.* br. fol. 34. and ſome other bookes; And although the Patron, after became a Recuſant, and was convict, yet that doth not vitiate the preſentment which he made *in pura vita ſua*; For if a good Proteſtant grant the next avoydance to a Church, and after become a Recuſant, yet that ſhall not avoyd the Grauntee of his Intereſt which was made, when the Grauntors was cleere and voyd of that Leproſie; contrary it is, if the Grauntor were a Recuſant, when he made the graht (though he was not convicted til after) for after the conviction the forfeiture of the ſtatute had a reach back to the Commencement of his offence, which was, when he firſt became a Recuſant: But now I ſhall put you a ſhort caſe, which falls between the Lord *Cookes* caſe and mine, and that is; If one become a Recuſant, and then grant the next avoydance to a Church, and after is indicted for a Recuſant, but the indictment extends in time after the grant of the avoydance, I might make ſome queſtion whether the grant of the avoydance ſhould be avoyded; And I think it ſhall, and the Univerſity ſhould have the preſentment in that caſe: but the forfeiture of xxl. a moneth were cleer (in the caſe) out of the Statute; For admitting he were a Recuſant foure months, and he is indicted but for the 3 laſt months, the King can-

not have xxl. for the fourth moneth not found in the indictment:

Le case de Sir Christ. Hatton. The case of Sir *Christopher Hatton* might be strongly urged against me, which is, that Sir *Christopher* became Officer to Queen *Elizabeth* in *Anno xx.* of her Raign, (and he owed nothing) *quo anno*, he purchased land, and then conveyed the land away, *bona fide*, when he stood cleare and unindebted; and long after, in the 32. yeare of Queen *Elizabeth*, he became indebted, and not before, yet that land or Lease conveyed away, stood chargable with the debt; which case I grant, because he became accomptant when he first became Officer; and although the grew not indebted till after, yet the cause the Land was bound, was when he first became an Officer; but if, before he became an Officer, he had passed away any Lands, or made away any Leases, those Lands or Leases should not be charged; And so is the Law and Reason in my case, that because the Church fell voyd when the Patron was not any Recusant, and the presentment was then also made, that is the cause the Statute never could take hold of this presentment: but if (as in the Lord *Cookes* said case) he had been a Recusant when the Church became first voyd, or before he had presented, then (I think) it would have vested in the University, and Sir *Ignoramus* had had a faire pull at it.

But seeing the presentment which *Monsieur Avoüis* made, saved the Church for the time: yet (considering the Clarke was after refused by the elect) whether now the University shall have the presentment or not, is the question.

If the Patron Recusant could have repealed his presentment, then the question will arise, whether the same shall be transferred over to the University by the said Statute of *tertio Iacobi* or not.

And as I have formerly said, so I hold still that the Patron could not repeale or call back his presentation; For it is more then a meer power that he gives to the Clarke; for it is an intereſt for his preferment, especially being made to the party selfe; I grant the case of 1. *E.* 5. fol. 2. where one delivers money to *I. S.* to pay to *I. D.* Or where I deliver a horse to *I. S.* to deliver to *I. D.* The money in the one case, and the horse in the other, may be countermaunded before they be payed, or delivered over to the party, because the Bayliffe is but my servant in these cases: But put the case a little further, that I give a horse to *I. S.* to the use of *I. D.* or I enter into an obligation to the use of another, here, because I make the Byaliffe a party, I cannot in these cases make any countermaund of the things delivered: So, because (in the principall case in question,) the Clark

1 E. 5. 2

hath

hath a kinde of intereſt in the Church by the preſentation; In that reſpect therefore it cannot be repealed by the Patron: Yet (on the other ſide) I am of opinion, that if I have the nomination of a Clark, and *I. S.* the preſentation of him, that I may repeale my nomination, for *I. S.* is (in this caſe) but meerly my ſervant to preſent my Clark to the Biſhop: And I am of opinion alſo, that if the Patron *Monſieur Avidus* could have recalled his preſentation, that then that power had been transferred over to the Univerſity by the ſaid Statute; In the argument of which ſaid point, I may aptly put the caſe of Sir *Francis Englefeild*, in *Cookes* 7. Rep. where not only the condition, but alſo the performance of it was transferred over by Act of Parliament to the King, becauſe the party might have taken advantage and benefit of it himſelfe, and therefore the ſame advantage by the Statute was transferred over to the King: wherein alſo I take a difference between that caſe, and the caſe in *Fitz. N. Br.* fol. 148. *I.* That an aſſignee cannot have a writ of admeaſurement of dower, where the woman dowager had more aſſigned to her in dower then ſhe ought to have, but the heire the aſſignor might himſelfe So, if an Infant alien and dye without heire, the Lord by eſcheat cannot enter, for the Law doth not transfer ſuch titles over, yet an aſſignee in Law may take advantage of a condition or covenant; *Quia fortior & potentior eſt diſpoſitio legis quam hominis:* But the caſe in 8. *Eliz.* in *Dyer*, fol. 252. comes fitteſt to this purpoſe, wch is that there was a donative Chauntry, and the Prieſt made a Leaſe for yeares, and the Patron in taile confirmed the ſame, and after, the Chauntry was given to the King by 1. *E. 6.* of Chauntries; And whether the King might avoyd the ſaid Leaſe, and that ſuch title of avoyding the ſame be transferred over to the King by the ſaid Statute of Chaunteries or not, was the point: And it was holden that it was; but becauſe there was a Fine with Proclamation after ſhewne forth, which did barre the ſaid entaile, It therfore was holden that the King was barred, as the iſſue of the Tenant in tayle, the confirmer, was: which comes directly to my purpoſe; For a Statute which is the act of the whole Realm, may and will ſet the party, to whom the thing is aſſigned, in as good plight as the party was in from whom the ſame was taken: So in our caſe, when as *Monſieur Avidus* had preſented to the Church, and that he could not repeale his preſentation, but that he was bound thereby, The revocation and repeale of this preſentation could never by the act of 5. the King, be transferred over to the Univerſity, becauſe the Act of Parliament doth

The caſe of Sr *Fra. Engleſield.*

F. N. B.

8 *Eliz.* *Dyer* 252.

1 E. 6.

doth ſettle the ſame no otherwiſe in them then it was in the party ſelfe, from whom it was taken: And ſo the preſentment remaining in force till the death of *Monſieur Avidus* the Recuſant, when the Elect after refuſed the perſon preſented, becauſe, as then, the Recuſant was dead, It could not veſt in the Univerſity of *Cambridge*, but rather in the Executors of *Monſieur Avidus*.

And ſo, for theſe cauſes, I take it, that the Univerſity have no right to the ſaid avoydance, and that they could not conferre the ſame upon their Clark, Sir *Ignoramus*, if ſo be there had been no defect in the Clark himſelfe, which after ſhall be found to be manifeſt againſt him, notwithſtanding it were admitted that the Univerſity had a good title.

And ſo I will now paſſe over to the other points in the caſe which I intend to handle, as ſhortly as I can.

6. Point. The next thing to be handled in my caſe is, whether the awarding of the *Iure patronatus* be well or not, and what nature the ſame is of, and what points be enquirable thereby; and what manner of men the Jurors ſhould be which are to be uſed therein.

In the handling whereof I muſt uſe practiſe with Law, and where one ſerves me not, I ſhall make uſe of the other.

A jure patronatus is properly to be awarded, where the Church is litigious between divers Patrons, and the Biſhop ſtands in doubt which of them hath the true right, and ſo cannot tell (without ſome perill to himſelfe) which of their Clarks he ſhould receive and admit of: Then he may (to ſave himſelfe free from being a diſturber) award a Commiſſion of a *jure patronatus*; And I doe find in our books, as in 22. *H.*6. 44. and 33. *H.* 6. fol. 12. and 32. and 34. *H.*6.

22 *H.* 6
33 *H.* 6
32 *H.* 6.
34 *H.* 6

That a Church may be litigious
- Before the awarding of the *jure patronatus*.
- As alſo after the awarding therof
- And it may be made litigious by the awarding thereof.

1. Before, as where diverſe and ſundry Clarks be preſented by diverſe and ſeverall Patrons (as it is in my caſe) there the Church is litigious.

2. So is it, if two Commiſſions be awarded at the ſuite of two ſeverall Patrons, and in the one it is found for the one party, and in the other for the other party, here the Church reſteth litigious by this uncertaine verdict, and by theſe ſeverall preſentments.

3. Alſo, if in a *jure patronatus*, it be found for one, and before the Biſhop

Biſhop be requeſted by the Clark for whom it is found to admit him, another doth preſent, here the Church is litigious after the *jure patronatus* awarded.

And I collect by the book of 21. *H.6.44.* That if *I.S.* preſent his Clarke to the Biſhop, that if the Biſhop doubt of his title, he may award a Commiſſion of *jure patronatus*, notwithſtanding that, not any other Patron doth preſent; And this I collect by the ſaid books, for that it is there ſaid, That if two Patrons preſent ſeverally, the Biſhop ſhall award two Commiſſions of *jure patronatus*, that is, one for either party; And it is ſaid in the ſaid bookes, that the Biſhop is bound to admit the Clark of him, for whom it is found; If the Clark ſo require him, which he muſt doe or otherwiſe the Biſhop is not bound to admit him, but may ſuffer the laps to incurre and take advantage of it: But howſoever, I hold it plainely, the Church in my caſe was litigious, and a *jure patronatus* was to be awarded: Now then to declare the nature of a *jure patronatus*, and the points of it, come juſtly into our conſideration. It is therefore to be underſtood that a *jure patronatus*, is a Commiſſion awarded by the Biſhop, and under his ſeale directed to ſome expert in the civill Law to ſummon a Jury, to enquire of theſe five points.

1. *Si Eccleſiam vacat & quomodo vacavit.*

The points enquirable in a *jure patronatus* be

2. *Quis Patronus ultime preſentavit.*
3. *Quis eſt verus & indubitatus Patronus.*
4. *Quis nunc debet preſentare ad Eccleſiam nunc vacantem.*
5. *De idonitate perſonarum preſentat.*

And the Jurors which are to be ſworn upon this, are the one halfe of them Clergy men, Miniſters: and the other halfe be Lay men: And a Miniſter muſt be the Foreman: And ſo they are to be ſworn *alternatim*, One Miniſter, and then a Lay-man, and ſo till twelve or above be ſworn on the Jury, for (being but an enqueſt of Office) above twelve may be of the Jury. I have ſeen ſixteene of the Jury, *viz.* eight Clarkes, and eight Laymen; But, as they were divided in their habit and profeſſion, ſo they were divided in their opinions for their verdict, *Clerici contra Laicos, & Laici contra Clericos*: I doe find in this caſe that the verdict which finders the ſpeciall matter is *ſu-*

perius patronatus, which is effectuall in that point, but whether this ſpeciall matter leave it ſo at large, as that the Church remaine litigious ſtill or no, is a queſtion of ſome moment:

21 H. 6 It is cleere by 21. *H.* 6. That if two commiſſions be awarded, and the one findes for the one party, and the other for the other party, here the Church remaines litigious ſtill, ſo that the Biſhop may wel refuſe them both: but before the *jure patronatus* awarded, if it had bin his chance to have taken the wrong clark, and have refuſed the other which had right, the Biſhop had then been a diſturber, *quod non ita pro different*. But here is a ſpeciall verdict which in judgment of the Law, is found for him that hath right; Then, whether the Biſhop (at his perill) ought to take notice of the Law in this caſe, I hold it very diſputable: But yet, becauſe he is Judge in that caſe, I doe think it is at his perill to know the Law, and to preſent a right perſon upon the penalty of being a diſturber: And I have obſerved it in all enquiries of office, a verdict at large might be given by the Jury *ſuper veritatem facti*, as in a *Mandamus*, *& Diem clauſit extremum*, and ſo in this caſe; For, here be no iſſues joyned as in other Tryalls be, for there the verdict muſt be according to the point of the iſſue; but in commiſſions awarded *ex officio*, the enquiry may be, and ought to be, as large and ſpeciall as the commiſſion is.

But whether the particular finding of the diſabilities of the Clarkes by the Jury, be within the ſaid five points of the commiſſion, is now to be handled; And therefore firſt concerning the clark of *Monſieur Avidus*, where the Jury findes he had a former Benefice, whether that be a ſufficient cauſe to diſable the

14 H. 7 Clark, or not, I find by 14 *H.* 7. fol. 28. that it is no ſufficient cauſe for the Biſhop to refuſe the clark becauſe he had a former

Hollands Benefice, yet it appeares in *Hollands* caſe, and in 10. *E.* 3. 1.
caſe. *Co.* 4. *Parnings* opinion, that by the acceptance of a ſecond Benefice
10. *E.* 3. the Clark may be deprived of both by the ſpirituall Law: And
then in *Specots* caſe in Seignioury *Cookes* 5. rep. fol. 58. It was
Specots reſolved, that in all caſes which be ſufficient cauſes to deprive a
caſe. clark, they be ſufficient for the Biſhop to refuſe the clark; So that *ex conſequenti*, It followes, that if it be a ſufficient cauſe of deprivation, becauſe the clark had a former Benefice, then by

Specots

Specot's case, it a good cause of refusall: And this is within the 5th Article *de idonitate personarum*, inquirable by the said commission: But for my own opinion, if that *Monsieur Avidus* had right to the presentment, I should have held the having of a former Benefice, to be a sufficient cause to refuse his clark, because (at the least) the clark is deprivable for it, for the last Benefice, if not for the first also, and even as one which hath a wife and taketh a second, he is by the Law to be divorced from them. *Fitzh: N. b. fol. 34. l.*
I doe not in any sort beare with plaralities, but because it is against the Law civill; I therefore would gladly be resolved by some honest, single-beneficed Divine, whether it be not in some sort against the Law of God, and then I should more resolutely have delivered my opinion against him.

But to passe this matter over, I must now enter into the clauses, which be, and be not, in Law sufficient to refuse a clark presented.

If a clark be *criminosus*, then he may be refused, as if he be prejured; as it appeares in 38. *E.* 3. 3. although he were not convict of the offence; *quod dubito*, because in that case, he confessed himselfe to be perjared, before the Bishop upon his examination; which was in effect a conviction, being in a cause Ecclesiasticall, wherein the Bishop was Judge. *38. E. 3. 3.*

Occasion of a man is a cause to refuse a clark, for that is *crimen* by the same booke, by *Hollands* case, in the fourth Rep. of *Seignior Cooke*. *Hollands case.*

Bastardy, Villeinage and Nonage, be causes to refuse a clark, and herewithall agreeth 5. *H.* 7. 19. *Keble*, in *Specots* case aforesaid. *5. H. 7.*

If the presented be a Schismatick, it is a sufficient cause to refuse the clark; And I have observed that the difference between a Schismatick, and an Heretick, is this, that a Schismatick differs from us in manner, the Heretick in matter of Religion.

To refuse an Heretick or a Papisticall clark in my opinion be sufficient causes; For, for these offences the clark is deprivable.

So is nonability a sufficient cause, and to be illiterate by 5. *R.* 2. and *Specots* case: For the Statute of *Articuli Cleri, cap.* 13. is, *quod idoneitatem presentati, ad beneficium pertinet ad Judicem* *5. R. 2.*

Eccle-

Eccleſiaſticum ut propter defectum ſcientie & aliarum cauſarum rationabilium. So that Sir *Ignoramus* is disabled by Act of Parliament, and he being found by a Jury of clarks to be *egregie illiteratus*, I ſhall ſo hold him ſtill till he ſhall improve his Learning better: In little *Broke* fol. 114. I find a caſe, that where a man is attaint of Hereſie, or that he is a Jew or Turke, he cannot have his clergie, wherein I doe conclude, that theſe be ſufficient cauſes to refuſe a clark: But I doe not mean to include Sir *Ignoramus* in that caſe, to make it queſtionable whether he could have his clergy, becauſe (as I have heard) the grand Inqueſt already at *Newgate*, did *in favorem inſcientie ſue*, grant him the benefit of his name, and indorſed upon the indictment *Ignoramus*, and ſo was diſcharged.

Br. caſe 114.

But, to proceed, in 9. *Eliz.* in *Dyer*, a Biſhop refuſed a clark, for that he was a haunter of Tavernes, and unlawfull games: and was taken for a diſturber; yet I ſhall never commend that Patron that ſhall make choice of a drunken clark.

9 *Eliz.*

I hold it a ſufficient cauſe to refuſe a clark, which hath committed Simony, becauſe the Apoſtles *Peter* and *Paul* pronounced ſentence, and in the 8th of *Acts* againſt that offence, and the offender therein. So that my opinion concerning *B.* and Sir *Ignorams* two of the conformed clarks doth appeare.

8 Acts.

But now the matter of greater difficulty is, whether the offence in the woman Patroneſſe, becauſe ſhe was a Schiſmaticke were a good cauſe to refuſe her clark or not For although ſhe was to be cenſured an ill member of the church, yet if her clark were a competent perſon as he was (for ought that appeareth to the contrary) in my caſe, I then doe think, that the Biſhop could in no ſort juſtly refuſe him: But I am of opinion, that in ſome caſes the offence of the Patron ſhall be a cauſe ſufficient to refuſe his clark, as in 15. *H.* 7. where the Biſhop refuſed the clark, becauſe the Patron was excommunicate, and had ſo remained forty dayes: For there (by the Law) no man under paine of Excommunication could communicate with him: But I am of opinion that in caſes where the Patron is diſabled in the point of Patronage, that there his clarke may be refuſed; As, if he be outlawed, for then the King ought to have the Preſentment. So where three joyntenants be, and they vary in preſent-

15 *H.* 7.

3 *H.* 5, 3.
12 *H.* 6. 56

ment

ment, here the parties have not preſented according to their intereſt, and therefore the Biſhop may refuſe their clarkes. So (I take it) if *I. S.* preſent, and it appeare to the Biſhop that he have no right to the preſentment; The Biſhop may refuſe his clark; And becauſe this kind of Learning comes oft in practice, and yet is difficult: I ſhall therefore ſet down two or three caſes to inſtruct a Biſhop now and then how to get a laps by a ſtraine of wit; For I am of opinion (at this time) that if the Preſentor have no right, the Biſhop may refuſe his Clarke, and in a *quare impedit* he may well excuſe himſelfe, and may (in ſome ſort) plead in chiefe to the right of the patronage: And this opinion I doe both gather and maintaine by the caſes enſuing, and that is by 5. *H.* 7. fol. 34. where in a *quare impedit*, brought againſt the Biſhop, the plaintiffe declared that he was ſeized of the advowſon in Fee, and preſented on *E.* who was received, inſtituted and inducted: and that after, the church became voyd by the death of *E.* and remained voyd by the ſpace of 6. moneths, and the defendant collated *C.* who was inducted thereunto, and after, the ſaid church became voyd by the death of *C.* And that therefore now it appertaines to him to preſent, and the defendant did diſturb him: The defendant pleaded, that one *I. S.* did preſent the ſaid *C.* unto him as ordinary, and he did admit him, and he was inſtituted and inducted into the church at the preſentment of the ſame, *I. S.* and traverſed, *Abſque hoc*, that *C.* was collated by him. And this plea by the better opinion of the booke was good, and yet it doth entitle *I. S.* by the preſentment which was by diſturbance, and did diſable the Plaintiffe thereby: And thus the plaintiffe is diſabled by the plea of the Biſhop in point of right. 5. H. 7.

And, In 22. *H.* 6 fol. 28. Sir *Iohn Denhams* caſe, which is, that one brought a *Quare imp.* againſt the Biſhop and one R. *Chanon* of St. *Needs* and declared that W. his Father was ſeiſed in fee of the Mannor of *Hatland*, to the which the advowſon of the *Abbathy* of St. *Needs* was appendent, and that the Abby voyded by the death of *A.* and his Father preſented *B.* who was admitted, inſtituted and inducted at his preſentation, and that his Father dyed, whereby the mannour and ad- 22. H. 6.

vowſon deſcended to the Plaintiffe as next Heire, and that the Abbey became void by the death of *B.* and ſo it belongs to him to preſent, and he preſented his covenable Clark to the Biſhop defendent, and he refuſed him.

The Biſhop pleaded that the Abby of Saint *Needs*, time out of memory, had been a Houſe of Abbot *Prior* and covent, and that the *Prior* and *covent* have uſed, when the Abbey became void, to elect one to be Abbot, and to preſent him to the Biſhop, and if he found him a covenable clark, then he received him, and cauſed him to be inſtalled: And he ſaid, that the Abbey became void, and the *Prior* and Covent did elect the other defendant and preſented him to the Defendant the Biſhop, and he found him covenable, by reaſon whereof, he admitted of him and cauſed him to be inſtalled, and ſo claimeth nothing but as Ordinary: and by the direction of the Court he traverſed the appendancy, which is an excellent caſe for my purpoſe: For hereby it appeares that the Biſhop pleaded an Iſſuable plea to the *Droit* of the church.

13. H. 7. And there is another caſe in 13. H. 7. fol the 18. where the Lord *Haſtings*, and the Lady *Mary* his Wife, brought a *quare Imp.* againſt Sir *Walter Hungerford*, and declared how *Mompeſſon* and others were ſeized of the advowſon in groſſe to the uſe of the Plaintiffs, and they being ſo thereof ſeized, graunted the Adowſon to *R.* who regraunted the ſame to them, and ſhewes a preſentment, and that the church became void &c. now apperteineth for them to preſent, and they preſented their *Clark*, And the Biſhop one of the Defendants, refuſed to receive him: The patron, the Biſhop, and the Incumbent, joyned in a Plea, and pleaded and ſet forth, that *Mompeſſon*, and his other co-Feoffees were, and ſtood ſeized of the Advowſon to the uſe of Sir *Walter Hungerford* one of the Defendants, and of his Heires Males of his bodie, and he preſented, *Abſque hoc*, that the ſaid *Mompeſſon* and other his Co-feoffees were ſeized to the uſe of the Plaintiffs: which Plea (no doubt) was a good Plea for the Patron, and alſo for the inducted incumbent, ſince 25. E. 3. the ſtatute of 25. E. 3. *Cap.* 7. And I ſuppoſe that the Ordinary hath ſuch an intereſt in the Church, as that he may alſo plead thereunto, For, (as it appeares) the Patron and Ordinary in

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the vacancy may actually charge the church, with a perpetuall rent-charg, but not with annuity (as I take it.) And although some have held before me, that he shall be but in case as a disseisor which can plead no plea to the tenancy, as 26. *Assis.* 49. and 35 H. 6. 13. is The reason there is, because he is taken in the Law to have no interest in the tennancy: but an Ordinary surely hath some interest in the Church, considering he and the Patron may charg the Church in the time of Vacation, and he shall set a Clark therein if a lapse come: yet I am of opinion, that if *I. S.* disseise *I. D.* of a Mannour, to the which the Advowson of *L.* is belonging, that if *I. S.* present to that Church, the Bishop cannot (upon penalty to be taken a disturber) refuse the Clarke of *I. S.* unlesse that *I D.* doe also present. for then he ought to receive his Clarke; and my reason is, because *I. S.* had right to the Advowson against all others but against the Disseisee, by reason of the possession, which is sufficient to close the hands of the Ordinary. 26. Ass. 35. H. 6.

These cases I have put purposely to maintain the title of the Bishop, because I hold, that the refusall of the Clarke of the *Feme* Schismatique, is not any sufficient cause, but that she failed in point of right, which by these cases, is proved, that, the Ordinary might plead and justifie against her.

But, to proceed a little further in this learning, It is requisite for me to declare, how and in what manner these causes of refusals ought to be shewen by the Bishop, and how and before whom they shalbe tryed, *It* is plaine by *Specotts* case aforesaid, that, for the Bishop to excuse himself in a *quare imp*: for refusing of a Clarke, *quia fuit Schismaticus inveteratus* was no sufficient cause, but he ought to have shewen *in q^o^ & quomodo*: and so by 9. of *Eliz.* in *Dyer* aforesaid, that the Clarke was *Criminosus*, without shewing certainly, in what, was insufficiently pleaded, and the reason is, because the Patron may take issue thereupon: and if it be in cases of Schisme, Heresy, or other offences *Ecclesiasticall*, the issue shall be tryed by the ArchBishop of the Province, And this I have observed out of 39. *E* 3. 1. and 40. *E.* 3. 20. Where, a clark was refused by reason of nonability and tryed by the garden of the spiritualities *Sede vacante Archiep*: But if the Clarke had been dead it *Specots* case. 9. Eliz Dyer. 39 E. 3. 40. E 3. 20.

should have been tryed *per patriam* : and by 5. *H.*2. A clark
5.H.2. was deprived by sentence given at *Rome*, because he was a miscreant, and that was tryed *per patriam*, because the Iudges could not write to any to try that issue : So, Outlawry, death of a man, and perjury, in a temporall cause shall be tryed by Jury, but perjury in an Ecclesiasticall cause shall be tryed by the
38.E.3 Bishop, *ut constat*, *per* 38. *E.* 3.3.

Let these cases suffice for this matter, because I would not be more tedious then my case doth afford me occasion.

Yet because, some of the Gentlemen of the Bench, and especially those of *Lincolnes-Inne*, have argued much against the Bishops Title, because he refused *B.* the Clark of *Monsieur Avidus*, by reason he had a former benefice, & Sir *Ignoramus* because he was illiterate; and gave no notice thereof to the Patrons which presented them : But I shall give them a full answer thereunto, which is, First by the book of That if the Bishop refuse a Clark for nonability of literature, if the Patron be a spirituall man which presented him, the Bishop need not to give him notice thereof : contrary, if the Patron thereof be a Layman : And the Vniversity is a learned Corporation which can of themselves, as well take notice of the learning of the Clark, as of his person, which I take to be a sufficient answer to Sir *Ignoramus* and his Patron : And the next reason shall extend to all the Clarks and Patrons also in my case (except the King and his Clark) and that I ground upon the said
22.H.6. books of 22. *H.*6. & 34. *H.*6. which is, that where divers persons
34.H.6. do present severally their Clarks to the Bishop, and he awardeth a *Iure patronatus* which is not determined, but by reason thereof, the 6. moneths passe, (as in our case,) yet in a *quare impedit*, it shall be a sufficient plea, for him, to plead that the Church was litigious by reason of the severall clarks presented and so remained untill the 6 moneths were passed, whereby he collated his clark : And this shall be a good plea without setting forth the proceedings in the *Iure patronatus*, and the speciall verdict thereupon given.

So that I hope those Gentlemen which have argued for *Monsieur plurality*, and for Sir *Ignoramus*, will rest satisfied with this answer, till I come neere the end of my case, and then

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I hope I ſhall more fully reſolve them, that the Law is againſt their Clyents, howſoever the exceptions were wittily and pertinently taken; and ſo, now I intend to proceed to the handling of the 8 point of my caſe.

The eight point of my caſe, is, whether the contract which *E.* made with Sir *Symon Magus* to further his inſtitution be ſuch a ſimony as ſhall cauſe *E.* if he had come in upon a good title to forfeit the Church as alſo to cauſe the ſaid Sir *Symon* to looſe his preſentation *hac vice*, and to forfeit the ſame to the crowne or not, which is grounded upon the Statute of 31. *Eliz.* 8 Point. 31. Eliz.

But this Statute ſeemeth plainly to diſtinguiſh betwixt Simony given; or contracted for, for and concerning the preſentment and where it is concerning the Inſtitution and Induction, for where the Patron contracteth to have or take for the preſentation, he loſeth his preſentment, and it is forfeit to the crowne: But if the Clark contract, or give any thing for to further his Inſtitution, he doth only looſe the preferment of that Church, and the patron is to have the preſentation, and doth not forfeit it for the abuſe of his Clark: I grant, that Simonicall contracts are deteſtable, before God and man, yet being ſo penall an offence; *It* is fit it ſhould be well proved, ere the offendor be puniſhed: *And* I cannot perceive but that the preſentment ſtood cleare without any touch of Simony.

And although Sir *Symon* was *particeps criminis*, yet the *crimen* was only in the contracting for, and concerning the Inſtitution and not concerning the preſentation, and if it were agreed colourably before the preſentation that Sir *Symon* ſhould have nor take any thing for the preſentation, but only to further the *Inſtitution*, then I ſhould take this concerning a Simony againſt Sir *Symon* upon this ſtatute, for many of the Gentlemen which argued the caſe, doubted, Sir *Symon* intended to defraud the Statute, fearing (becauſe he was a branch ſprung from ſo bad a Tree) he could bring forth no better fruit.

Therefore I will defend his act no further, but judging upon matters no otherwiſe then I ſee, I cannot find any juſt cauſe, in Law to entitle the King to the preſentation, nor to excuſe Sir Symon *of his unlawfull contract concerning*

cerning the institution, whereby the Clark did forfeit his preferment to the benefice; If so be that the party, with whom the Clark did contract, had had power in the Institution as Sir Symon *had not, yet to further it with the Archdeacon may be Simony.*

9. Point. But now all this serveth well for the *Eslie*, to maintaine his title by the lapse: for seeing the Advowson passed from the Grauntor, by his graunt, and then the Vniversity could not have it by his recusancy, nor the woman, because if it had not passed, yet it was setled in the Husband, and if it were well transferred away by him, then it vested in the Grauntee, and that the multitude of presentments made the Church litigious, even against him that had the very right; and that there was no such simony in the case as might forfeit the presentment to the King, then were the Bishops title, by lapse the best; but yet because I intend to bid them all to one selfe banquet, I meane they shall all tast of the like cheere; And therefore I plainely doe hold, the *Eslie*, which is the Bishop Elect, to have no right nor title to collate by lapse; and the reason is, because he is not sacred, and so wants that perfection which a Bishop ought to have, that is, to collate to a Benefice.

And in the handling of this point, I must ground my argument upon the statute of 25. H. 8. cap 20. Whereby I doe gather that five things are requisite to the perfection of a Bishop.

1. The first is a *Conge de Eslier*, directed from the King to the Deane and Chapter by Letters patents, giving them leave thereby, to proceed to the Election of a Bishop.

2 ly, The Election of the deane and chapter, which is *pro forma tantum*, for they are directed, whom they must choose.

3ly Then The certifying of their Election, and the mandate directed to the Arch-Bishop and two other Bishops, to proceed to consecration.

4ly The consecration, by the which he received the *pall*, *Benediction*, and *Church ceremonies*, which enabled him in *rebus spiritualibus*, and made him capable thereof.

5ly Installation and inthronization, by the which he was in-

tituled

tituled to the temporalties of his Bishoprick, and thereby was enabled to sue the same out of the Kings hands; by the which it appeareth, that, till consecration, he is not capable of the spiritualities, and then, *Ex consequenti*, it followes, that all the said patrons were mistaken, to present their clarks to the wrong Ordinary; and the Bishop Elect was somewhat too hasty to take u: on him power in those cases, to play the part of a perfect Ordinary before he was a consecrated Bishop. And for the case put in *Fitzh. Nat. Br.* Fol. 2 E. which is, That if in temps of vacation, and after such time as there is a Bishop elect, a man have cause to sue a writ of right, he may have it directed to the bailiffs of the elect Bishop; which I doe not think to be law, under favour of that book, because, till he be installed, he hath no possession of his temporalties, nor then neither till he have sued the same out of the Kings hands, as by common experience is manifest. And the suing of a writ of right concernes his temporall estate, and it appeares in *Fitzh. Nat. Br.* Fol. 169 that till a Bishop be sacred he cannot have a writ, *De restitutione temporalium*. And therefore before then I suppose he hath not any power in his temporalities, nor in the spiritualities till his consecration be finished. And by 21 E. 3. 39. and 40. That from the consecration the Bishop shall have his temporalities and not before, and from thence he shal in writs and commissions be named Bishop; and before he shal only be named the Elect Bishop, Notwithstanding, In case in Co. 8. *Trollopps* case 69. it is said, that a Bishop Elect, before he be sacred, may certify an excommunication; which may be law, because the certification is only a ministeriall act; but I suppose he cannot pronounce sentance of excommunication, which is a judiciall act: For therein it is requisite, he should be a Bishop sacred though not inthorized.

F.N.B. 2

F. N. B. 169.

21. E. 3.

So that now that I have destroyed the title of *Monsieur A*n *vidus* because I hold the advowson passed away to the graun-tee Sir *Symon Magus*; and hereby also the pretended title of the University falls to the ground, because the *G*raunt was made before the Grauntor became a Recusant, when he stood

good *Rectus in Ecclesia*, and the title of the *Feme* was not sufficient to vest this avoydance in her, because it fell in the life time of her husband, and so was lawfully passed away to the Grantee, and the title of the King failes in point of *Simony*, and that Sir *Symon* presented to a wrong person, because the Bishop was not sacred, and if it were made to a right Bishop, yet the church was litigious and so remained 6 moneths, and that the lapse could not apperteine to the Bishop elect, for the causes and reasons aforetaid.

Therefore, it appeares, that not any of the persons in the case have right to the said presentment.

To point. Then, Now for the conclusion of my last point; It comes most fitly to be shewen, what person hath the best right thereunto.

And that (I hold) is the garden of the spiritualities, which most commonly is the Dean and Chapter, during the vacancy of the Bishoprick, because the Bishop is to present by Lapse, *ratione Spiritualium*.

But, If a Bishop have an Advowson belonging to a Mannour, or to his temporalities, which voydeth during the vacancy, there the King shall have the presentation, for that comes to him, *ratione temporalium*, as it appeareth in *Fitzh Nat. Br. fol.* 34. F.N.B.34 *K.* 44. *E.* 3. 3. 50. *E.* 3. 25. which be in the Kings hands. But in 31 44. E. 3. 3. *H. fol.* 16. during the vacancy of a Bishop, the garden of the spi- 50. E. 2. 25 ritualities shall have the spiritualities, and he shall have the lapse 2. H. 6. 10 to whom the presentment ought to be made, which is, The garden of the spiritualties.

And so I do conclude against all the said parties, and am of opinion that the garden of the spiritualities ought to have the presentment of the Church, hac vice by the lapse.

Finis, Fustis, Funis,

Sir IGNORAMVS.